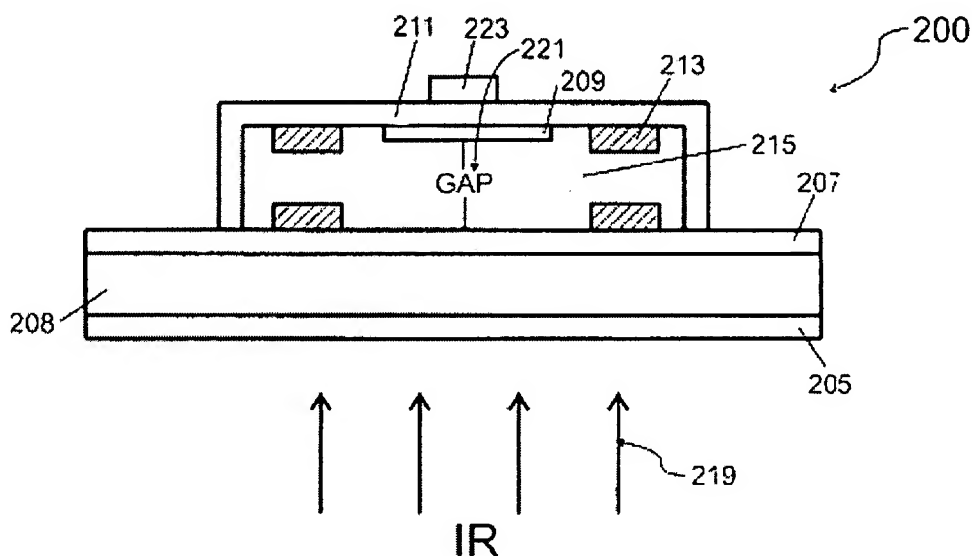


REMARKS/ARGUMENTS

Claims 1 and 17 are amended by this response. No claims are canceled or added. Accordingly, following entry of these remarks, claims 1-25 will remain pending for examination.

As shown and described in connection with Figure 2 (reproduced below), certain embodiments disclose a transparent substrate (208) through which electromagnetic radiation (219) enters a tunable cavity region (215).



As indicated in at least ¶[0019] of the specification, the tunable cavity region (215) receives electromagnetic radiation (219) through transparent substrate (208), this substrate having a reflection device (207) formed on its backside.

Accordingly, claims 1 and 17 are hereby amended to recite a substrate having a first reflection device formed on a backside. Support for this amendment may be found in the application at least at ¶[0021] and ¶[0042].

In the latest office action, the Examiner maintained final rejection of all of the claims, either as anticipated by, or obvious in view of, U.S. Patent Publication No. US2005/0226281 to Faraone et al. ("the Faraone publication"). These claim rejections are traversed as follows.

Regarding the anticipation claim rejections:

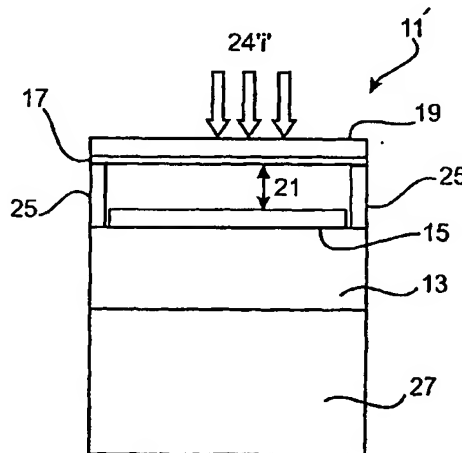
[t]he distinction between rejections based on 35 U.S.C. 102 and those based on 35 U.S.C. 103 should be kept in mind. Under the former, the claim is anticipated by the reference. No question of obviousness is present. In other words, for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the

claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present. (Emphasis added; MPEP 706.02)

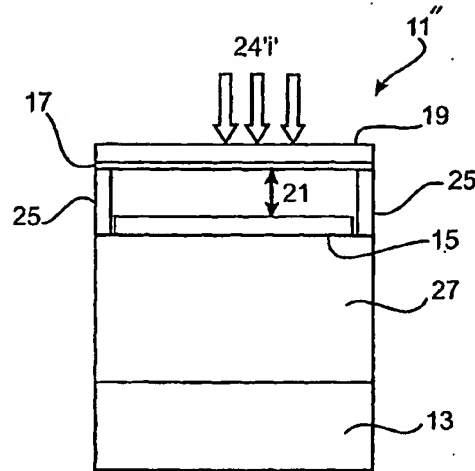
To establish a prima facie case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim elements. (MPEP 2143).

Here, the Faraone publication fails to teach, or even suggest, an apparatus or method wherein electromagnetic radiation enters the tunable cavity region through a transparent substrate where that transparent substrate has a reflection device on its backside.

Instead, the Faraone publication generally teaches that incident radiation enters a Fabry-Perot cavity directly without passing through a substrate. For example, Figure 3a (reproduced below) shows incident radiation 24'i' entering through a top reflector electrode (19) and passing through a membrane (17) to reach a Fabry-Perot cavity (21). Substrate (27) underlies Fabry-Perot cavity (21), and hence this cavity clearly does not receive electromagnetic radiation transmitted through the substrate.

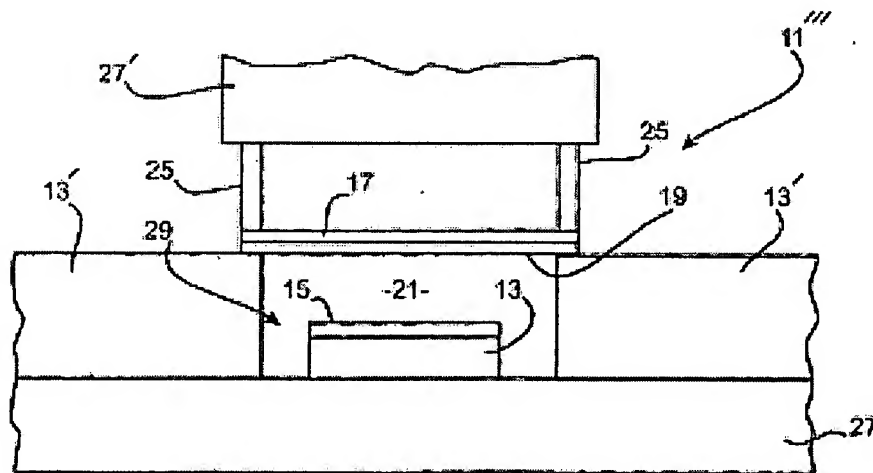


Other figures of the Faraone publication similarly fail to disclose the claimed embodiments. For example, Figure 3b (reproduced next page) shows incident radiation 24'i' entering through a top reflector electrode (19) and passing through a membrane (17) to reach a Fabry-Perot cavity (21).



Again, Fabry-Perot cavity (21) overlies substrate (27), and hence that cavity does not receive electromagnetic radiation transmitted through the substrate.

Figure 3c (reproduced below) of the Faraone publication shows yet another structure, this one having two different substrates:



The first substrate, "substrate" (27), is the same as that shown and described above in Figures 3a-b. Specifically, "substrate" (27) is positioned below the Fabry-Perot cavity (-21-), which is again not configured to receive incident radiation transmitted through the substrate (27).

The second substrate, "separate substrate" (27'), does not appear to correspond to any structure of Figures 3a-b. "Separate substrate" (27') is described as being "transparent to incident IR radiation, so that the radiation may pass through to the FP cavity 21 for filtering" ([0144]). However, this "separate substrate" (27') does not have a reflection device formed on its backside. Figure 3c of the Faraone publication thus also clearly fails to teach or suggest the claims.

Based upon the failure of the art relied upon by the Examiner to teach, or even suggest, all of the elements of the pending claims, it is respectfully asserted that the claims cannot be considered anticipated or obvious. Continued maintenance of the claim rejections is improper, and these claim rejections should be withdrawn.

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Kent J. Tobin
Reg. No. 39,496

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 650-326-2400
Fax: 415-576-0300
KJT:BCS:tmm

61158134 v1